

John Huber

IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH, IN AND FOR
UTAH COUNTY.

C-1

THE PROVO RESERVOIR COMPANY,
a corporation,
Plaintiff,

-vs-

PROVO CITY, et al.
Defendants.

* No. 2888 civil.
*
* SEPERATE ANSWERS OF NEPHI HUBER
*
* JOSEPH HUBER AND JOHN M. HUBER, A
*
* ADMINISTRATOR OF THE ESTATE OF
*
* JOHN HUBER, DECEASED..

Come now Nephi Huber, Joseph Huber and John M. Huber, as administra
tor of the tate of John Huber, deceased, defendants herein, and
answering the complaint of plaintiff, admit, deny and allege as
follows:-

- 1- The se defendants admit all of the allegations of said complaint
setforth in paragraphs 1 to 27 inclusive.
- 2- These defendants admit all the allegations of paragraph 31- 38
and 5 of said complaint.
- 3- Answering paragraphs 28 to 33 inclusive these dei ndants allege
that they have no knowledge or information sufficient to form a
belief as to the matters therein alleged and therefore deny all
of said paragraphs.
- 4- These defendants admit that plaintiff claims rights as alleged in
paragraph 34 of the complaint herein, but deny such allegations for
want of knowledge and information as to he extent of such rights.
- 5- These defendants deny for themselves alone the allega tions of
paragraph 35 of plaintiff's complaint, except that these defendants
claim and allege that any right of plaintiff to use of waters of
Provo River or its tributaries at or above the points of diversion
used by these defendants are all subject to prior rights of these de-
fendants, as hereinafter in their counterclaim setforth.

6- Answering paragraph 36 of plainiff's complaint the defendants deny that they or their predecessors in interest have used any water or waters from Provo River or its tributaries in a wasteful manner and deny that they have diverted and used or shall ever in the future use amount actually necessary to properly and beneficially irrigate the lands to which the waters diverted by them are appurtenant, and these defendants deny that they have at any time or in any manner interfered with, prevented or hindered the plaintiff or any of his water users or assigns from receiving and using any water to which plaintiff or any of his water users or assigns are entitled; these defendants allege that they have ~~known~~ no knowledge or information sufficient to form a belief as to whether other defendants in this action waste water or interfere with, prevent and hinder plaintiff and his water users from receiving and using waters to which they are entitled, and therefore den such allegations.

7- These defendants admit that decrees of the Fourth District Court of the State of Utah, were entered as alleged in paragraph 37 of plaintiff complaint, but deny the other allegations of said paragraph for want of knowledge and information sufficient to form a belief thereof.

8- These defendants deny each and every other allegation of said complaint not hereinabove specifically admitted or denied.

C O N T R A D I C T O R Y .

Further answering the complaint filed herein and by way of contradiction these defendants allege:-

That the defendants Nephi Huber and Joseph H. Huber are co-partners and as such are the owners in fee simple of forty acres of land situated in Section 21, Township 3 South, Range 4 East of Salt Lake Meridian, in Garfield County, State of Utah, and that said defendants Nephi Huber and Joseph H. Huber, own a ^{a primary or low} water right which is appurtenant to said 40 acres of land sufficient to irrigate twenty-six acres thereof during the entire irrigation season of each year.

5

2- That water right sufficient to irrigate 40 acres of said land hereinabove in paragraph one of this counterclaim described, was acquired prior to the year 1870 by one Schear, now deceased, by appropriation and use upon the land to which said water is now appurtenant and belonging to defendants Nephi Huber and Joseph E. Huber and said defendants succeeded to the title of said land and water right by purchase from the estate of said Schear, deceased; that water sufficient to irrigate 2 acres of the lands, hereinabove in paragraph one of his counterclaim described, was acquired prior to the year 1865, by John Huber, deceased, by appropriation and use upon the lands to which said water is now appurtenant and belonging to the defendants Nephi Huber and Joseph E. Huber, and said lands were sold by ~~xxx~~ said John Huber, deceased, to one John Krebs, now deceased, that one Robert Krebs, ~~also deceased~~, succeeded to the interest of John Krebs, deceased as an heir and that the defendants Nephi Huber and Joseph E. Huber purchased ~~x~~ from the ~~Estate of~~ said Robert Krebs, ~~deceased~~, the said lands together with the water right thereto; that water sufficient to irrigate four acres of the lands hereinabove in paragraph one of this counterclaim described, was acquired in the year 1888, by the ~~xxx~~ above mentioned Robert Krebs, ~~deceased~~, by appropriation and use upon the lands to which said water is now appurtenant, and said defendants Nephi Huber and Joseph E. Huber, succeeded to the interest of said Robert Krebs, ~~deceased~~, by purchasing said land and water right from the ~~estate of~~ said Robert Krebs, ~~deceased~~.

3- That in addition to the primary or low water right appurtenant to and used upon the above described 40 acres of land situated in Section 21, Tp. 3 S, R. 4E, Salt Lake Meridian owned by the defendants Nephi Huber and Joseph E. Huber, said defendants and their predecessors in interest have used, for about fifteen years last past, sufficient of the high or flood waters of said Snake Creek, a tributary of Provo River, to irrigate all of said 40 acres of land hereinabove in this paragraph described, once or twice during such high or flood water period.

4- That said lands are composed of a gravelly loam on the surface

with a deep strata of gravel underneath, and that owing to the said nature of the soil it requires water at the ratio of one second foot of water for each 50 acres of land and in order to properly soak up the said soil ~~ix~~ during the high or flood water season it requires water at the ratio of one second foot of water to each 40 acres of land.

5- That the right to the use of the water of said Snake Creek used by these defendants and their predecessors in interest as herein alleged and their right to the use of high or flood waters upon their lands, has never been used continuously, but has been applied as the crops growing upon such lands required irrigation, at intervals of approximately every ^{18 days} ~~two weeks~~, and when so used has been used in large quantities so that the same might be economically and beneficially used and applied to said lands for their proper irrigation, and that owing to the nature and kind of soil of said lands it is impracticable and impossible to properly and beneficially irrigate the same with a stream of less than 4 or 5 second feet, as a smaller stream percolates through the soil and evaporates and can not be distributed or flooded over the said land so as to properly irrigate the same.

6- That the defendant John Huber, named in the plaintiff's complaint filed herein died during the month of November, 1914, and that at the time of his death he was an actual bona fide resident of Wasatch County, State of Utah, and left estate in said Wasatch County; that thereafter the defendant John M. Huber, was duly and regularly appointed as administrator of the estate of said John Huber, deceased, and that he qualified and entered upon the duties of his trust and the said John M. Huber now is the duly appointed, qualified and acting administrator of the estate of John Huber, deceased, and has been by order of Court substituted as a defendant in the place of John Huber, deceased.

7- That the Estate of John Huber, deceased is the owner of sixty acres of land situated in Section 21, Township 3 South, Range 4 East, Salt Lake Meridian, in Wasatch County, State of Utah.

and said estate is the owner of a ~~water right~~ a primary or low water right of the waters of Snake Creek, a tributary of Provo River, sufficient to irrigate forty-four acres of the lands hereinabove in the paragraph described; that said water right was ~~an~~ acquired prior to the year 1865, by appropriation and use by the said John Huber, deceased, upon the said above described lands, and that the said waters so appropriated have been used by the said John Huber, deceased, and his said estate, upon the above described lands ever since their appropriation.

8- That the said John Huber, deceased, during his life time and his estate since his death have used larger quantities of water upon said 44 acres of land, hereinabove in paragraph 7 described during the high or flood water period of each and every year, ~~xxx~~ since the year 1865, in order to soak up said land for the benefit of the crops growing thereon.

9- That the said estate of John Huber, deceased, also owns fifteen acres of land situated in ~~Township~~ Section 22, Township 3 South, Range 4 East, Salt Lake Meridian, in Wasatch County, State of Utah, together with a right to use of the high or flood waters of Pine, or White Pine Creek, a tributary of the above mentioned Snake Creek and of the Provo River, sufficient to irrigate said fifteen acres of land, hereinabove in this paragraph described, at least two times during the high or flood water period of each year.

10- That the surface soil of both of the above described tracts of land belonging to the estate of John Huber, deceased, are ~~gravely~~ ~~sandy~~ loam with a deep strata of gravel underneath, and owing to the nature of such soil it requires water at the ratio of ~~xx~~ one second foot for each 50 acres of land during the low water season and one second foot for each forty acres of land during the water season to properly and beneficially irrigate such lands.

11- That the Estate of John Huber, deceased, the said John Huber deceased, and his predecessors in interest have for more than 20 years last past used the high or flood waters of Pine, or White Pine Creek, upon the 15 acres of land hereinabove in par

agraph 9 of this counterclaim described; that the said right to the use of said high or flood waters of said Pine or White Pine Creek, was acquired by one John Kumer about the year 1895, by appropriation and use upon said lands in Section 22, Tp.3 S. R. 4 E. S.L.M. as above described, and the said John Huber, deceased succeeded to the right and interest of said John Kumer by purchase.

12- That the right to the use of said waters of Snake Creek and the right to the use of the high or flood waters of Pine or White Pine Creek, by the estate of John Huber, deceased, has never been a continuous use of the said waters upon said lands but the water has been applied as the crops and verdure growing thereon required irrigation, at intervals of about every 18 days and when so used has been used in large quantities so that the same might be economically and beneficially applied to said ~~land~~ lands for their proper irrigation, and that owing to the nature and kind of soil of said lands it is impracticable and impossible to irrigate the same with a stream of less than 4 or 5 second feet, as a smaller stream percolates through the soil and evaporates so that it can not be distributed or flooded over the lands in a manner to properly irrigate the same..

WHEREFORE these defendants pray judgment:-

1- That the defendants Nephi Huber, ^{and Joseph E. Huber,} be decreed to be the owners of 13 1/5 second feet of primary or low water right of the waters of Snake Creek, a tributary of Provo River, as and for water right ~~xx~~ appurtenant to 40 acres of land owned by said defendants and situated in Section 21, Township 3 South, Range 4 East, Salt Lake Meridian, Wasatch County, State of Utah;

That defendants Nephi Huber and Joseph E. Huber, be decreed to be the owners of 7 1/20 second feet of the high or flood waters of Snake Creek, a tributary of Provo River, as and for a high water right appurtenants to ^{said} 40 acres of land situated in Section 21, Township 3 South, Range 4 East, Salt Lake Meridian, Wasatch County, State of Utah, said 7 1/20 second feet to be used up the 1st day of July of each year unless the

water commissioner appointed to distribute such waters shall give notice to discontinue the use of high waters at an earlier date;

3-That the defendant John M. Huber, as administrator of the estate of John Huber Deceased, be decreed to be the owner of 22/25 second feet of the primary or low waters of Snake Creek, a tributary of Provo River, as and for the water right appurtenant to 44 acres of cultivated lands situated in Section 21, Township 3 South, Range 4 East, Salt Lake Meridian, Wasatch County, State of Utah, and belonging to the estate of John Huber, deceased;

4- That the defendant John M. Huber, as administrator of the estate of John Huber, deceased, be decreed to be the owner of ~~22/25~~ 3/8 second feet of the high or flood waters of Pine or White Pine Creek, a tributary of Snake Creek and Provo River, as and for a high water right appurtenant to 15 acres of land situated in Section 22, Township 3 South, Range 4 East, Salt Lake Meridian, and belonging to the estate of John Huber, deceased. said water to be used up to July 1st, of each year unless the water commissioner shall give notice to discontinue to use such waters at an earlier date.

5- That it be decreed that any water commissioner who may be appointed by the court to distribute the waters of Provo River and its tributaries to the parties entitled thereto, shall be directed to distribute to these defendants larger quantities of water at regular intervals, the quantity to be proportionate to the rights of these defendants to the use of the waters of said river and its tributaries, so that their lands may be properly and economically irrigated.

6- These defendants pray for such other and further relief as may be just and equitable and for their costs herein expended.

Chase Hatch
Attorney for Defendants.

State of Utah,
ss.
County of Utah,

Nephi Huber, being first duly sworn deposes and says that he is on of the defendants named in and filing the above and foregoing answer; that he has read the said ~~XXXXXX~~ answer and knows the contents thereof; that the same is true to his own knowledge except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

Nephi Huber

Subscribed and sworn to before me this 12 day of December, 1916.

My commission expires _____

Robert Robinson
Notary Public.

Service accepted
Dec. 12th 1916
ALB.
Approved for
JAN 10 1917
CLERK OF DISTRICT COURT
DISTRICT 1
SALT LAKE CITY
UTAH